

1958—Subsec. (a). Pub. L. 85-861, §2(5)(A), designated existing provisions as subsec. (a) and substituted “Except as provided in subsection (b), only male persons” for “Only persons”.

Subsec. (b). Pub. L. 85-861, §2(5)(B), added subsec. (b).

§ 307. Federal recognition of officers: examination; certificate of eligibility

(a) To be eligible for Federal recognition as an officer of the National Guard, a person must—

(1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard;

(2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved; and

(3) except as provided in subsections (d) and (e) of this section, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by section 312 of this title.

(b) The examination prescribed by subsection (a)—

(1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and

(2) may be held before original appointment or promotion.

(c) If such a board finds a person qualified, the Chief of the National Guard Bureau may issue to him a certificate of eligibility for Federal recognition for the office for which he was found qualified. If he is originally appointed or promoted within two years to that office, he is entitled to Federal recognition without further examination, except as to physical condition.

(d) Subject to subsection (a)(1) and (2) and to such physical examination as may be prescribed, Federal recognition shall be extended to each officer of the Army Reserve who has qualified for appointment as an officer of the Army National Guard in his reserve grade. Similarly, Federal recognition shall be extended to each officer of the Air Force Reserve who has qualified for appointment as an officer of the Air National Guard. Federal recognition extended under this subsection is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

(e) Subject to subsection (a)(1) and (2), Federal recognition shall be extended to each officer of the Air Force Reserve who is appointed in a commissioned grade in the Air National Guard to fill a vacancy, if on the date on which he is appointed his reserve grade is the same as the grade in which he is appointed or his name is on a recommended list for promotion to that reserve grade.

(f) Federal recognition extended under subsection (d) or (e) is effective from the date of ap-

pointment in the Army National Guard or the Air National Guard, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 602; Pub. L. 85-861, §2(6), Sept. 2, 1958, 72 Stat. 1543; Pub. L. 92-492, §2(b), Oct. 13, 1972, 86 Stat. 810; Pub. L. 96-535, Dec. 16, 1980, 94 Stat. 3165; Pub. L. 103-337, div. A, title XVI, §1676(a)(2), Oct. 5, 1994, 108 Stat. 3019.)

HISTORICAL AND REVISION NOTES
1956 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 307(a) | 32:113 (1st sentence). 32:111 (37th through 56th words). 50:1113(a) (as applicable to officers). | June 3, 1916, ch. 134, §74 (39th through 56th words); restated June 4, 1920, ch. 227, subch. I, §41 (39th through 56th words), 41 Stat. 781. |
| 307(b) | 32:113 (2d sentence and 1st 24 words of 3d sentence). | June 3, 1916, ch. 134, §75; restated June 15, 1933, ch. 87, §12, 48 Stat. 158; |
| 307(c) | 32:113 (3d sentence, less 1st 24 words). | July 9, 1952, ch. 608, §803 (10th par.), 66 Stat. 505. |
| 307(d) | 50:1115(a) (less last 39 words). | July 9, 1952, ch. 608, §§703(a) (as applicable to officers), 705(a) (less last 39 words), 66 Stat. 502. |

In subsection (b), the words “prescribed by subsection (a)” are substituted for the words “to determine such qualifications for appointment”. The word “designated” is substituted for the word “appointed”, since the filling of the positions involved is not an appointment to office in the constitutional sense. The words “of an individual as an officer or warrant officer” are omitted as surplusage.

In subsection (c), the word “originally” is inserted for clarity. The words “If such a board finds a person” are substituted for the words “if the applicant has been found”. The words “for individual Federal recognition for the office for which he was found qualified” are inserted for clarity. The words “that office” are substituted for the words “the office for which he was found qualified”.

In subsection (d), the words “Notwithstanding the provisions of section 113 of Title 32” are omitted as covered by the words of exception in revised subsection (a). The words “Subject to subsection (a)(1) and (2)” are inserted, since 50:1115(a) (less last 39 words) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words “in his reserve grade” are substituted for the words “in the same grade in which he is appointed as a Reserve officer of the appropriate Armed Force of the United States”. The last sentence is inserted for clarity.

1958 ACT

| Section of title 32 | Source (U.S. Code) | Source (Statutes at Large) |
|---------------------|--|--|
| 307(a) | 50:1349(b) (1st sentence). | Sept. 3, 1954, ch. 1257, §519(b), 68 Stat. 1179. |
| 307(e) | 50:1349(b) (less 1st sentence, and less 36th through 58th words of 2d sentence). | |
| 307(f) | 50:1349(b) (36th through 58th words of 2d sentence). | |

In subsection (e), the words “to subsection (a)(1) and (2)” are inserted, since 50:1349(b) was not an exception to that part of 50:1113 relating to qualifications prescribed by the Secretary, or to the requirement that only members of federally recognized units can be federally recognized. The words “without the examination prescribed in section 113 of Title 32” are omitted as covered by the words of exception in revised subsection (a). The last 37 words are substituted for 50:1349(b) (last 29 words of 2d sentence; and last sentence).

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-337 struck out “and sections 8365 and 8366 of title 10” after “of this section”.

1980—Subsec. (g). Pub. L. 96-535 struck out subsec. (g) which prohibited extension of Federal recognition to members of the Virgin Islands National Guard in any grade above colonel.

1972—Subsec. (g). Pub. L. 92-492 added subsec. (g).

1958—Subsec. (a)(3). Pub. L. 85-861, §2(6)(A), substituted “subsections (d) and (e) of this section and sections 8365 and 8366 of title 10” for “subsection (d)”.

Subsecs. (e), (f). Pub. L. 85-861, §2(6)(B), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF SUBSECTION (e) OF THIS SECTION

For authority of the President to suspend subsec. (e) of this section in time of war or emergency declared by Congress, see section 111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 308, 310 of this title; title 10 sections 1370, 14301, 14308, 14316.

§ 308. Federal recognition of officers: temporary recognition

(a) The Secretary of the Army may authorize the extension of temporary Federal recognition as an officer of the Army National Guard to any person who has passed the examination prescribed in section 307(b) of this title, pending his appointment as a reserve officer of the Army. The Secretary of the Air Force may do likewise for a person who has passed that examination pending his appointment as a reserve officer of the Air Force. Temporary recognition so extended may be withdrawn at any time. If not sooner withdrawn or replaced by permanent recognition upon appointment as a reserve officer in the same grade, it terminates six months after its effective date.

(b) To be eligible for temporary Federal recognition under subsection (a), a person must take an oath that during the period of temporary recognition he will perform his Federal duties as if he had been appointed as a reserve officer of the Army or the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 603.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-------------------------------------|---|
| 308(a) | 50:1114 (less 2d and 3d sentences). | July 9, 1952, ch. 608, §704 (less 2d sentence), 66 Stat. 502. |
| 308(b) | 50:1114 (3d sentence). | |

In subsection (a), the words “by regulations” are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words “as an officer of the Army National Guard to any person” are substituted for the words “to any officer of the National Guard or Air National Guard”. The second sentence is inserted for clarity. The words “successfully”, “final determination of his eligibility for, and”, “in the grade concerned”, and “automatically” are omitted as surplusage. 50:1114 (proviso of last sentence) is omitted as surplusage.

In subsection (b), the words “To be eligible for temporary Federal recognition under subsection (a), a person” are substituted for the words “However, a temporary extension of Federal recognition shall be granted only when the officer”. The words “the period of temporary recognition” are substituted for the words “such recognition”. The words “and obligations required of him” and “in the same grade” are omitted as surplusage.

§ 309. Federal recognition of National Guard officers: officers promoted to fill vacancies

Each officer of the National Guard who is promoted to fill a vacancy in a federally recognized unit of the National Guard, and who has been on the reserve active-status list or the active-duty list of the Army or the Air Force for at least one year and has completed the minimum years of service in grade specified in section 14303 of title 10, shall be examined for Federal recognition in the grade to which the officer is promoted.

(Added Pub. L. 85-861, §2(7), Sept. 2, 1958, 72 Stat. 1543; amended Pub. L. 103-337, div. A, title XVI, §1630(1), Oct. 5, 1994, 108 Stat. 2963.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 309 | 50:1251. | Sept. 3, 1954, ch. 1257, §319, 68 Stat. 1160. |

The words “authorized under section 1227(a) of this title” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337 substituted “National Guard officers: officers” for “officers: Army National Guard; officers” in section catchline and amended text generally. Prior to amendment, text read as follows: “Each officer of the Army National Guard who is promoted to fill a vacancy in a federally recognized unit thereof, and who is eligible for promotion under section 3363(b) of title 10, shall be examined for Federal recognition in the grade to which he is promoted. However, a second lieutenant or first lieutenant of the Army National Guard who has served creditably for at least one year in a position prescribed to be filled by a captain, and who has not previously been federally recognized under this section, may be examined for Federal recognition in the next higher grade without regard to section 3363(b) of title 10.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

SUSPENSION OF THIS SECTION

For authority of the President to suspend this section in time of war or emergency declared by Congress, see section 111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 310 of this title.

§ 310. Federal recognition of National Guard officers: automatic recognition

(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition